

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
DECEMBER 6, 2006**

CALL TO ORDER A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Charles Lapp, Randy Toavs, Gordon Cross, Gene Dziza, Kathy Robertson, Jeff Larsen, and Don Hines. Kim Flemming and Frank Dekort had excused absences. Eric Giles, Nicole Lopez-Stickney, Traci Tull, and Jeff Harris represented the Flathead County Planning & Zoning Office.

There were approximately 6 people in the audience.

PUBLIC REVIEW Jeff Larsen reviewed the public hearing process.

APPROVAL OF MINUTES A motion was made by Robertson, seconded by Dziza, to approve the October 18th, 2006 minutes.

The motion was carried by quorum.

PUBLIC COMMENT
(not related to agenda items) Erica Wirtala, of Sands Surveying, talked about Summit View Subdivision. She talked about condition #12, groundwater, level 2 septic systems, and nitrate levels. She said level 2 septic systems are unnecessary. Requiring it would be putting the wrong “band-aid” on the problem. The problem is groundwater, not high nitrate levels.

Jerry Lipp, of Environmental Consulting, talked about nitrate levels and groundwater. He said groundwater is an issue, that’s why they’d put sand mounds in if a system were to fail.

**PRELIMINARY PLAT/
BLACK GOLD TRACTS
FPP 06-58** A request by Carol A. Duval for Preliminary Plat approval of the Amended Plat of Lot 3, Black Gold Tracts, a two (2) lot major single-family residential subdivision on 4.32 acres. Lots in the subdivision are proposed to have individual water and septic systems. The property is located at 2402 MT Highway 206.

STAFF REPORT Eric Giles reviewed Staff Report FPP 06-58 for the Board.

BOARD QUESTIONS Dziza asked Giles to elaborate on the 10-ft. buffer along the highway.

Giles said the Subdivision Regulations require any lot abutting a major arterial highway, state highway, or federal highway to have a 10-ft. planting screen easement as a buffer. There are no trees to buffer with, but the easement has to be in place.

Toavs asked about the green highlighted area on the plat map.

Giles said it’s the B.P.A. easement and the septic system drain field.

Toavs asked if the only building site was close to the highway.

Giles said yes; it would be a very small structure if they could fit one on the lot.

Cross clarified that a mixing zone was okay with the B.P.A., however a drainfield was not.

Giles said yes.

APPLICANT

Joe Kauffman, of Big Sky Surveying, talked about the two lot split with an existing easement. He said the existing easement, from the original plat of Black Gold Tracts subdivision, was located improperly. Kauffman said that he calculated the lot sizes; lot 3A is 0.55 acres and lot 3B is 1.44 acres. The current Subdivision Regulations state that an easement can not split property. The easement proposed does split the property. He said they have an approach permit from the County Road Department for 18 lots. He commented on the power transmission lines that go through the property and said they are low voltage lines.

Robertson asked him when the original Black Gold Tracts subdivision was approved.

Kauffman said probably about six or so years ago.

Robertson commented on a condition they frequently add stating lots cannot be further subdivided and asked if the Black Gold Tracts subdivision had that condition.

Kauffman didn't know.

AGENCIES

None.

**PUBLIC
COMMENT**

Carol Duval, said they are not creating this lot to build another house. She said they own a construction business and would like this land to place a shop on, to store extra materials.

Robertson asked if it would be easier to build a shop on their land, as it is, instead of splitting the land.

Duval said it would be better to have the shop on a separate piece of land so when something happens to her and her husband, her kids can sell the house and be able to keep the shop.

**STAFF
REBUTTAL
APPLICANT
REBUTTAL**

Giles said the application was submitted for two single-family lots.

Kauffman said the applicant may want to put a bathroom in the shop and place a drainfield. The applicant isn't asking for a commercial property.

**BOARD
DISCUSSION**

Hines asked Giles how the property is zoned.

Giles said it's unzoned with a Scenic Corridor overlay.

Lapp asked Kauffman to point out where structures currently exist on the property.

Kauffman pointed them out on the plat map and said the applicant's current home is closer to the power lines now than a new structure would be on the proposed lot.

Robertson said they couldn't build on the easement. She said it doesn't seem like they would have enough room to build anything.

Larsen said that they would have 20,000 square feet to build on.

Robertson asked if most of the lots in that area are between 5 and 7 acres.

Giles said the Columbia Range Subdivision, which is out in that area, is highly dense.

Kauffman said the lots will be around 0.75 acres.

Giles said the applicant's lot would be consistent with the new subdivision going in.

Toavs said he has a construction company also and said the equipment and materials aren't very nice to look at. He doesn't think it would be a good thing to see from the highway and near the entrance to a subdivision. He didn't support it.

Cross said he has an issue with it too.

MAIN MOTION

Cross made a motion seconded by Robertson to adopt Staff Report FPP 06-58 as findings of fact and recommended **denial** to the Board of County Commissioners.

**BOARD
DISCUSSION**

Harris read parts of Section 3.3, which discusses land unsuitable for subdivision. Harris said it states many reasons land is unsuitable for a subdivision; one of them being high voltage power lines.

**MAIN MOTION
ROLL CALL**

On a roll call vote the motion passed 6-1 with Larsen dissenting.

**BOARD
DISCUSSION**

Larsen wanted to amend the findings-of-fact.

**ADDITION TO
FINDINGS OF
FACT**

Cross made a motion, seconded by Robertson to add a sentence to the last finding-of-fact to read: Under FCSR Section 3.3 lands unsuitable for subdivision include lands on which there is evidence of hazards such as high voltage lines.

The motion was carried by quorum.

**BOARD
DISCUSSION**

Toavs talked about the original intent of the subdivision and said had it been advertised as a construction yard, more neighbors would have come to the meeting to protest.

**ADDITION TO
FINDINGS OF
FACT**

Cross made a motion, seconded by Robertson to add the sentence to the second finding-of-fact to read: The applicant stated their intention was to build a construction storage facility on Lot 3A.

The motion was carried by quorum.

**PRELIMINARY
PLAT/
HARBOR
VILLAGE PH 2BB
(FPP 05-70)**

A request by Rocky Mountain Recreation Communities, LLC for Preliminary Plat approval of Harbor Village at Eagle Bend-Lake Point Phase 2BB, a four (4) lot single-family residential subdivision on 3.11 acres. All lots in the subdivision are proposed to have public water and sewer systems. The property is located off Lake Point Drive, which is accessed from Holt Drive.

STAFF REPORT

Traci Tull reviewed Staff Report FPP 05-70 for the Board.

**BOARD
QUESTIONS**

Robertson said she doesn't see a condition regarding the pet fence requested by BLUAC.

Tull said Condition # 19 requires a pet fence along the border of the wildlife refuge.

Toavs asked how much more they could develop in Eagle Bend.

Tull said they have 2 more units. She said they were originally approved for 264 or 266 lots.

Cross said the staff report shows that portions of the site are in flood zone A; the 100-year floodplain. He asked if that was before or after the fill.

Tull said the lots will not be in the floodplain after the fill.

Cross asked what was going on with the original plan.

Tull said it was a "conceptual plan", not a "master plan." She said she was going to direct that question to Brian Long.

Lapp asked if the remainder was part of the golf course.
Tull said yes and pointed it out on the map.

Lapp asked about the cul-de-sac.

Tull said it would be an extension of an existing road.

APPLICANT

Brian Long, of Long Engineering, said they are proposing four new lots and presented a map to the Board. He talked about open space, lot size, the waterfowl production area, water & sewer extensions, and roadways. He commented on the "conceptual plan" and passed out a handout to the Board that they prepared for the Commissioners. He talked about the floodplain and the permits they have obtained from FEMA. He said the elevation of the proposed lots will be 2-ft. above the base-flood elevation. He mentioned 3 conditions having to do with floodplain and said they don't seem to be a problem. He rebutted a public comment letter received and discussed some of the conditions. He doesn't see the need for bear-proof containers, and doesn't think the pet fence near the waterfowl area is necessary.

Cross asked about the site location.

Dan Manning, General Manager for Harbor Village, said the proposed site has been a dumping area for dead trees and sand from the golf course. He had a man from the DNRC in Missoula come look at the site. He was told none of the grass is natural.

AGENCIES

None present.

Written comments were received from the Flathead County Address Coordinator, Weed and Parks Department, Bigfork Fire Department, and the Superintendent of Schools.

Larsen asked if there were any neighbor comments.

Tull said a neighbor comment was received after the staff report was written.

**PUBLIC
COMMENT**

None.

**STAFF
REBUTTAL**

Tull said she understands why the applicants want to get rid of the two conditions, however she thinks they are important due to the close proximity to the waterfowl protection area. She said BLUAC was pretty adamant about the pet fencing condition.

**APPLICANT
REBUTTAL**

None.

MAIN MOTION

Robertson made a motion seconded by Dziza to adopt Staff Report FPP 05-70 as findings of fact and recommended approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

Cross commented on a miscalculation in the Staff Report and talked about the conditions in regards to wildlife.

Robertson said BLUAC does their homework and thinks when they recommend something it should be listened to.

**MAIN MOTION
ROLL CALL**

On a roll call vote the motion passed unanimously.

Harris asked if the motion also included condition #19.

Larsen said yes.

**FLOODPLAIN
TEXT
AMENDMENT
(FRTA 06-01)**

An amendment to various sections of the Flathead County Floodplain and Floodway Management Regulations. Specifically, the amendments would be to the ADOPTION; Section 2.01-Definitions of the "Official Floodplain Maps"; Section 3.02-Floodplain District Establishment; Section 3.05-Compliance; Section 4.01-Administration; Section 5.01-Applications; and adding a new Section 5.06-Floodplains within the Lake and Lakeshore Protection Zone.

STAFF REPORT

Traci Tull reviewed Staff Report FRTA 06-01 for the Board.

**BOARD
QUESTIONS**

Lapp asked if FEMA has a suggested time frame for processing.

Tull said no. She referenced a letter received from Don Burton expressing concern about having an indefinite amount of processing time. She said that's not the County's intention. Tull said the County isn't opposed to adding wording to require floodplain permits be reviewed within 60 days of the receipt of a completed application by the floodplain administrator.

Larsen asked if the local Floodplain Administrator looks at it and if it's then forwarded to FEMA.

Tull said no; it's reviewed at the state level, not by FEMA.

Larsen asked about the wording in regards to the 60-day time frame.

Tull said there was no problem reviewing the application in 60 days, but said there can't be a consequence if it isn't reviewed in that time period. She is not opposed to having an initial 60-day review period.

Lapp said if that wording was added, the applicant would know they would be contacted within 60 days. The application might not be approved, but they would be updated on how the application was coming along giving them somewhat of a time frame.

Larsen said it takes a long time to do the necessary research to complete the application. He asked if there was a problem with an initial 60-day review time for the application.

Tull said no. She agreed there should be an initial review in 60 days.

Harris commented on the “dual permitting” process in regards to obtaining a lakeshore and a floodplain permit. He said Staff’s goal is to ultimately find a way to combine the two permits.

APPLICANT

Request by Flathead County.

AGENCIES

None Present.

Written comments were received from the DNRC and FEMA.

Tull also said they received one written comment and one verbal comment.

**PUBLIC
COMMENT**

Don Burton, 324 Wild Goose Run, said he turned in a written comment. He expressed concern for removing the 60-day time frame from the regulations; he thinks it would be a public injustice. He said there should be consequences for not reviewing the application in 60 days.

**STAFF
REBUTTAL**

Tull said she put in a request to Mary Jo from FEMA to submit her report but has not received anything yet.

**APPLICANT
REBUTTAL**

None.

MAIN MOTION

Cross made a motion seconded by Robertson to adopt Staff Report FRTA 06-01 as findings of fact and recommended approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

Lapp asked Tull a question in regards to email correspondence from FEMA. He asked about the wording, “unless a community has an auto adopt clause then the date of effective maps must be listed.”

Tull said she already replied to the email and changed the wording and must be very specific about dates on the flood insurance.

Robertson asked to have the report amended as suggested by Staff and asked Tull to read back the wording to the Board.

Tull read the following for the Board's consideration: A floodplain development permit application should be initially reviewed within 60 days after the date of receipt of a complete application by the Floodplain Administrator, unless the applicant has been notified that the permit is denied, conditionally approved, or additional information pertinent to the permit review process is required.

Larsen asked if the staff would change the wording from "should be reviewed" to "shall be reviewed."

Tull said that was not a problem.

**MOTION TO
CHANGE #4; 4.01
ADMINISTRATION**

Cross made a motion seconded by Hines to change the wording from "should be reviewed" to "shall be reviewed" and change Staff's proposed wording to: A floodplain development permit application shall be initially reviewed within 60 days after the date of receipt of the a complete application by the Floodplain Administrator.

The motion was carried by quorum.

**BOARD
DISCUSSION**

Tull said they submit a study to Helena and that's partly why the process takes so long. The DNRC requires a hydrology study and there is always additional information required.

Harris said 60 days is reasonable and they would at least get back to the applicant within that time. He said this is an emergency fix to this part of the regulations to satisfy FEMA's request. Staff plans on having a total update of all the regulations.

Hines asked if the Board would see these changes and whether it would be on an ongoing basis or all at once.

Harris said they would be a part of the process and said it's up to the Board whether they want to see things on an ongoing basis or all at once.

The Board said they would like to be involved on an ongoing basis.

**MAIN MOTION
ROLL CALL**

On a roll call vote the motion passed unanimously.

OLD BUSINESS

Lopez-Stickney talked about Summit View, a previously reviewed subdivision, in regard to the reconsideration of condition #12. She said the Planning Board did not recommend approval of the subdivision. The Commissioners were asked to amend condition #12 regarding the Type 2 treatment system. Staff sees it as the conditions being a whole package and they shouldn't be changed.

Cross said it's his recollection that Staff cannot recommend a Type 2 treatment system and that's why the Staff Reports are written as such.

Lopez-Stickney said that's true; Planning Staff are not sanitarians and therefore should not be recommending treatment systems.

Harris said the issue today is whether or not the Board wants to reconsider condition #12 even though they didn't approve the plat. He said the Board's options are to discuss it or send it back to the Commissioners as is.

Larsen asked about the original vote on the subdivision.

Lopez-Stickney said the original vote was 5-4 to deny.

Larsen asked about the vote on condition #12.

Lopez-Stickney thought the vote was 8-1.

Lapp thought the Board should talk about their options before they decide on anything.

Hines said he doesn't want to open a "can of worms." He said it's nice to make a decision and move on; he doesn't think they should have to consider this again.

Robertson agreed. She said it has gone through all the right channels and on top of that they voted the subdivision down. She doesn't think they should reconsider something they didn't approve in the first place.

Lapp said the Commissioners change conditions all the time and wondered why they couldn't make a decision this time.

Cross said according to what they heard earlier is that this was coming back as a courtesy. He said for him to adequately revisit this, he would have to go back and look at the tape. He said when they see high groundwater they usually recommend Type 2 systems.

Robertson said that if the applicant had evidence the land did not require a Type 2 septic system they should have had that information to start with.

Cross said the applicant had a chance to rebut the condition when it first came through.

Larsen said some of the Board members voted to approve the subdivision because that condition was added. He doesn't want to start having conditions sent back to them on a regular basis; he wants to vote once and be done with it.

**OLD BUSINESS
CONTINUED**

Harris said the Board could not legally make another decision on the matter without holding another public hearing. He said the public has to have a chance to speak on it.

Larsen said the applicants can not have the Commissioners look at new information that the Planning Board has not heard.

Toavs asked about the process of hearing new information from the applicant. He asked if the applicant had to have the Planning Board hear the new information before the Commissioners.

Harris said that's correct. The Commissioners can change whatever they want, they just can't accept new information the Planning Board hasn't heard.

Lapp said this isn't new information.

Robertson agreed.

Wirtala said there is a groundwater problem but Level 2 systems won't fix the problem. She wants to put sand mounds down, not add different septic systems. She said that would be putting the "wrong band-aid on." She thinks the Commissioners are getting "gun shy" about making decisions on conditions, and they felt the decision should go back to the Planning Board. She stated they have not run out of time for their 30 days of appeal.

Lapp said the Level 2 system isn't even the issue for him. He said the Commissioners change things all the time and he doesn't think precedence should be set of them sending things back to the Board.

Robertson said the recommendation for denial wasn't because of this issue, but if they would have approved the subdivision she would be more willing to discuss the issue.

Lapp said Fleming made the motion about the Level 2 septic systems and would not have voted for the subdivision if that condition wasn't added.

Larsen said they should look to the future for septic systems. He said it is always a good idea to put in a better septic system than needed at that moment.

Harris handed out the statistical information the Board had previously requested to show difference between the way the Planning and Zoning Staff, the Planning Board and the Commissioners vote.

Hines thanked everyone for working on the Growth Policy.

**OLD BUSINESS
CONTINUED**

Cross said if the Planning Board denies something, there is a 65% chance the Commissioners will approve it. He didn't like the fact that on Monday, during the growth policy meeting, there would be no public comment. He felt like that was a slap in the public's face.

Larsen said he would not stop someone from talking at the meeting. He said that it would deny the public their right to freedom of speech.

The Board discussed, at length, the Growth Policy and public comment.

MOTION

Lapp made a motion seconded by Hines stating the Board will not consider revising condition #12 of Summit View and to send it back to the Commissioners as is.

ROLL CALL

On a roll call vote the motion passed unanimously.

NEW BUSINESS

Harris discussed the problem with declaration of unit ownership documents being recorded with the Clerk and Recorder before they are approved by Planning and Zoning. Staff has made an arrangement with the Clerk and Recorder's office to help solve the problem.

Cross commented on the December 11th Growth Policy meeting agenda.

ADJOURNMENT

The meeting was adjourned at approximately 8:15 p.m. on a motion by Robertson seconded by Hines. The next meeting will be held at 6:00 p.m. on December 13, 2006.

Jeff Larsen, President

Kayla Kile, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 1/10/07